of fourteen years in a factory. Any violation of the statute was punishable as a misdemeanor. *Held*, that the unlawful employment was in itself negligence, and subjected the defendant to a civil liability. *Marino* v. *Lehmaier* (1903), — N. Y. —, 66 N. E. Rep. 572.

In support of its decision, the court cites: *Willy* v. *Mulledy*, 78 N. Y. 310, 34 Am. Rep. 536; *Pauley* v. *Lantern Co.*, 131 N. Y. 90, 29 N. E. 999, 15 L. R. A. 194; *Huda* v. *Am. Glucose Co.*, 154 N. Y. 474, 48 N. E. 897, 40 L. R. A. 411; *Stewart* v. *Ferguson*, 164 N. Y. 553, 58 N. E. 662. But in the above cases actual negligence was present and the injured party could recover at common law irrespective of statutory regulations. In the principal case, the plaintiff's injury was unexplained. No negligence on the part of the defendant was shown. It appears, therefore, that the decision in the principal case goes further than any of the other cases in holding that the mere employment of the plaintiff in violation of the statute was proof of actual negligence.

PATENTS—UTILITY—RIGHT TO INJUNCTION.—A invented a bogus coin-detector for use in coin-operated vending machines. The patent having been assigned to the complainant, it was used by his licensee in gambling devices. The defendants, without license, applied the invention to gambling machines of their own make. In a suit to enjoin the defendants from so using the device, *Held*, that the complainant is entitled to the remedy. *Fuller* v. *Berger* (1903), — C. C. A. —, 120 Fed. Rep. 274.

The defenses to the suit were (1) that the patent is void for want of utility, (2) that the complainant has no standing in equity because he does not come into court with clean hands, since the suit is brought to prevent the defendant from interfering with illegal practices of the licensee. As to the first defense, the court concluded that utility is not negatived by an evil use, when it is apparent that the invention can be used for legitimate purposes; quoting WALKER ON PATENTS, sec. 82 (3d ed.). The second defense was also disposed of by the majority—Judge Grosscup rendering a strong dissenting opinion,—on the ground (1) that upon a mere showing that the complainant has committed some legal or moral offense which affects the defendant only as it does the public at large, the court must grant the equitable remedy and leave the punishment of the offender to other forums; (2) that where the complainant seeks merely to enforce his right to exclude others, an inquiry into the use made of the patent by the owner is irrelevant. *Brown Saddle Co.* v. *Troxel*, 98 Fed. 620; *National Folding Box and Paper Co.* v. *Robertson*, 99 Fed. 985, and cases there considered. The dissenting judge took the ground that the public being a party to the patent, the writ will not issue to enforce the rights under a patent of one who uses those rights to the detriment of public morals. That equity will not refuse relief because of general misconduct, see POMEROY'S EQUITY JURISPRUDENCE, vol. 1, sec. 399. But equity will not enforce a contract or aid a transaction which is against public policy; idem, vol. 1, sec. 402.

PLEADING—VARIANCE.—The plaintiff took out a writ in trespass on the case: his declaration was in trespass. *Held*, that the variance was fatal, that the declaration could not be amended, and that advantage could be taken of the variance at any stage of the case. *Slater* v. *Fehlberg* (1903), — R. I. —, 54 Atl. Rep. 383.

Stevens says the rule is of high antiquity that the declaration must conform to the original writ. ANDREW'S STEVENS' PLEADING, p. 416; *Young* v. *Watson*, Cro. Eliz. 308. The rule has been adopted by early cases in the United States; *Nichols* v. *Nichols* 10 Wend. 630; *Ridder* v. *Whitlock*, 12

How. Pr. 208; *Wainwright* v. *Harper*, 3 Leigh 292 (Va.); contra: *Altick* v. *Pa. R. Co.*, 9 Lanc. Bar (Pa.) 62; *Morse* v. *Clem*, 4 Pa. Co. Ct. R. 118; *City of Fon du Lac* v. *Bonesteel*, 22 Wis. 242.

PUBLIC OFFICERS—LIABILITY FOR LOSS OF FUNDS—CHECKS INCLUDED IN STATUTE MAKING TREASURER LIABLE FOR "FUNDS OR MONEY."—The board of review of a county of which defendant was treasurer was authorized to issue $100,000 in bonds, the proceeds of which were to be paid to and kept by the treasurer, who should be responsible for the same as for other funds or money of the county. The board of review accepted a bid for the bonds from a bank, and the treasurer accepted a check from the bank in payment, giving a receipt to the board for the amount as the proceeds of the bonds. The treasurer deposited the check in the bank, and shortly afterwards the bank failed. In an action by the county against the treasurer and sureties, *Held*, that "proceeds of sale" and "funds or money" are not limited to coin or bank bills, but include any medium of payment in common use, and the treasurer could lawfully receive a check; that the effect of the transaction was the same as though the treasurer had received coin or bank bills as the proceeds of the bonds, and had deposited them, and that he was liable on his bond for conversion of the money. *Montgomery County* v. *Cochran* (1903), — C. C. A.—, 121 Fed. Rep. 17.

The defense in this case was based solely on the ground that the treasurer could not be held for a breach of his bond to keep safely the proceeds of the sale, because he never received them. However, the court construed the words of the statute, "funds or money," to include the check received by him. *State* v. *Hill*, 47 Neb. 456, 66 N. W. Rep. 541; *State* v. *McFetridge*, 84 Wis. 473, 54 N. W. Rep. 1, 20 L. R. A. 223; *Taylor* v. *Robinson* (D. C.) 34 Fed. Rep. 678, 681. The absolute liability of a public officer for loss of public funds without his fault, though denied by some state courts, is enforced by the supreme court of the United States. See review of cases on this point in I MICHIGAN LAW REVIEW, 557

PUBLIC OFFICERS—REMOVAL BY PRESIDENT.—The office of general appraisers of merchandise was created by act of congress in 1890. Provision was made for the appointment of nine general appraisers by the president, by and with the advice and consent of the senate, and for their removal from office at any time by the president for "inefficiency, neglect of duty, or malfeasance in office." S, who had been one of the appraisers for nine years, was removed by the president without notice of the cause of his removal. In an action brought by him for salary accruing after removal, *Held*, that congress by providing for removal from office for certain causes did not restrict the right to remove to the specified causes, but that the right still inheres in the president to remove at will; that the removal will be presumed to have been made for causes other than those specified by congress, hence no notice and opportunity for hearing were necessary. *Shurtleff* v. *United States* (1903), — U. S. —, 23 Sup. Ct. Rep. 535.

This decision is based upon the reasoning that the power to remove from office is inherent in the power to appoint, unless taken away in unambiguous language, and that congress did not use words sufficiently plain to warrant the court in determining that any intention existed to create what would practically be a life tenure office. By this construction the statute providing for removal means nothing at all, unless, perhaps, it may be said to raise the presumption that the officer was in no way deficient in his duty. As to the general power of removal from office, see MECHEM ON PUBLIC OFFICERS, secs. 445, 450 and 452; *Ex parte Hennen*, 13 Pet. 230; *Parsons* v. *United States*, 167 U. S. 324, 42 L. ed. 185, 17 Sup. Ct. Rep. 880.